



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Central Regional Office, 627 Main Street, Worcester, MA 01608

DEVAL L. PATRICK
Governor

TIMOTHY P. MURRAY
Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

October 16, 2007

Michael Jeanson
Jeanson Homes, Inc.
12 Kennedy Lane
Acton, MA 01720

Re: Wetlands/Acton
File # 85-971, Superseding
Order of Conditions
West of 8 Spring Hill Rd.

Dear Mr. Jeanson:

MaryAnn DiPinto of the Department of Environmental Protection conducted a site meeting on September 27, 2007 in response your appeal of the Acton Conservation Commission's denial of an Order of Conditions issued for the above-referenced project. The commission denied the project both under the Massachusetts Wetlands Protection Act as well as the Town of Acton Wetland Protection Bylaw.

The Department understands the proposed work to be the construction of a common driveway to serve two new homes as part of a subdivision of land from property that has an existing home. That home at 8 Spring Hill Road was sold separately while a 5.2 acre parcel was retained by the former owner. The construction of the common driveway results in the filling of 928 square feet of Bordering Vegetated Wetland with the intermittent stream channel being bridged by an open bottom culvert. A replication area of 961 square feet is proposed.

The Commission's Order stated that the project was denied because it could not be conditioned to meet the Performance Standards under the Wetlands Protection Act or under the Acton Wetlands Bylaw, and because the information submitted was insufficient to describe the activity and its impacts on the wetlands. The Conservation Commission also stated that another alternative should have been explored to access the upland over a former cart path located across the back land at 8 Spring Hill Road. The Commission did ask Acton Survey, the consultant for the applicant, to explore this possibility as a means to lessen wetland and buffer zone impacts. Mark Donohoe responded to this request in a letter dated June 4, 2007 stating that because the common drive would access three lots it would need to be constructed wider and result in approximately 1500 square feet of wetland impacts. The cart road has completely grown over and is no longer a cleared path.



The wetlands impacts for the alternative crossing are greater than the current proposal. Since land including all of the remaining wetland area is being set aside in a conservation restriction, a 401 Water Quality Certificate will not be required by MassDEP. The Department therefore has determined that the proposed work can be conditioned to adequately protect the interests of the Act. Based on the above, the Department hereby issues the attached Superseding Order of Conditions **approving** this project. However, the Department reserves the right to raise additional issues and present further evidence as may be appropriate should there be further proceedings in this matter. Work may not commence however until all approvals are in place, including an approval under the Town of Acton Wetlands Bylaw.

If you have any questions regarding this Order please contact MaryAnn DiPinto of this office at (508) 792-7650 ext. 3711.

Sincerely,



Philip P. Nadeau
Wetlands Section Chief

Enclosure

cc: Conservation Commission

Dara Mitchell
8 Spring Hill Road
Acton, MA 01720

**Massachusetts Department of Environmental Protection**

Bureau of Resource Protection - Wetlands

DEP File Number:

WPA Form 5A – Superseding Order of Conditions

85-971

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40
and Wetland Regulations 310 CMR 10.00**A. General Information**

1. From: Department of Environmental Protection
Regional Office of the Department of Environmental Protection (the Department)
2. This issuance is for (check one):
a. ☒ Superseding Order of Conditions
b. ☐ Amended Superseding Order of Conditions
3. To: Applicant:
Michael Jeanson Jeanson Homes, Inc.
a. Name b. Company
12 Kennedy Lane
c. Mailing Address
Acton MA 01720
e. City/Town f. State g. Zip Code
4. Property Owner (if different from applicant):
William & Deanne Angell
a. First Name b. Last Name
643 Pheasant Hill Road, Village of Nagog Woods
c. Mailing Address
Acton MA 01720
d. City/Town e. State f. Zip Code
5. Project Location:
West of 8 Spring Hill Road Acton
a. Street Address b. City/Town
E-6 6-1
c. Assessors Map/Plat Number d. Parcel/Lot Number
Latitude and Longitude, if known (note: electronic 42° 29' 59.32" 71° 23' 36.88"
filers will click for GIS locator): e. Latitude f. Longitude
6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Middlesex South 24106 522
a. County b. Book c. Page
d. Certificate (if registered land)
7. Dates: May 17, 2007 September 27, 2007 October 16, 2007
a. Date Notice of Intent Filed b. Date SOC Site Meeting c. Date of SOC Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
Notice of Intent Plan sheets 1 to 3 of 3 dated April 19, 2007 sheet 1 revised June 26, 2007
a. Plan Title
Acton Survey and Engineering Mark Donohoe, P.E.
b. Prepared By c. Signed and Stamped by
June 26, 2007 (see above) 1"=20'
d. Final Revision Date e. Scale
f. Additional Plan or Document Title g. Date
9. Total WPA Fee Paid: 1500.00 737.50 762.50
a. Total Fee Paid b. State Fee Paid c. City/Town Fee Paid

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

Following the review of the above-referenced Notice of Intent, the Order of Conditions, and information submitted with the request for the Superseding Order of Conditions, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:

- | | | |
|---|--|---|
| a. <input type="checkbox"/> Public Water Supply | b. <input type="checkbox"/> Land Containing Shellfish | c. <input checked="" type="checkbox"/> Prevention of Pollution |
| d. <input checked="" type="checkbox"/> Private Water Supply | e. <input type="checkbox"/> Fisheries | f. <input checked="" type="checkbox"/> Protection of Wildlife Habitat |
| g. <input checked="" type="checkbox"/> Groundwater Supply | h. <input checked="" type="checkbox"/> Storm Damage Prevention | i. <input checked="" type="checkbox"/> Flood Control |

2. The Department hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. The Department orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.

Denied because:

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Superseding Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

3. ☐ Buffer Zone Only

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
Vegetation alteration only:				
4. <input type="checkbox"/> Bank	a. linear feet	b. linear feet	c. linear feet	d. linear feet
5. <input checked="" type="checkbox"/> Bordering Vegetated Wetland	928	928	961	961
	a. square feet	b. square feet	c. square feet	d. square
6. <input type="checkbox"/> Land Under Waterbodies and Waterways	a. square feet	b. square feet	c. square feet	d. square
	e. cu.yd dredged	f. cu.yd dredged		
7. <input type="checkbox"/> Bordering Land Subject to Flooding	a. square feet	b. square feet	c. square feet	d. square
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	e. cubic feet	f. cubic feet

B. Findings (cont.)

Resource Area	Proposed Alteration	Permitted Alteration	Proposed Replacement	Permitted Replacement
8. <input type="checkbox"/> Isolated Land Subject to Flooding	a. square feet	a. square feet		
Cubic Feet Flood Storage	e. cubic feet	f. cubic feet	e. cubic feet	f. cubic feet
9. <input type="checkbox"/> Riverfront area	a. total square ft	a. total square ft		
Sq ft within 100 ft	c. square feet	c. square feet		
Sq ft between 100-200 ft	e. square feet	e. square feet		

C. General Conditions Under Massachusetts Wetlands Protection Act

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order. See Condition #26 below.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on **October 16, 2010** unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the DEP Regional Office on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.

C. General Conditions (cont.)

10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words, "Massachusetts Department of Environmental Protection" [or, "MassDEP"]

"File Number 85-971"

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Department of Environmental Protection in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until the Department of Environmental Protection has issued a Certificate of Compliance.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. All work associated with this Order is required to comply with the Massachusetts Stormwater Policy Standards.

Brief Project Description of Permitted Activities:

Construction of two single-family homes in the Buffer Zone with a common driveway wetland crossing.

Special Conditions (See the attached sheet(s) for additional conditions numbered 20 through 27)

20. All areas of construction shall be inspected at the close of each construction day. Erosion and siltation controls and control structures shall be monitored at that time and maintained, repaired, or reinforced as necessary. Erosion and/or siltation structures may be added based on experience at the site. These devices shall be inspected to assure maximum control has been provided after any rainfall.
21. Any damage caused as a direct result of this project to any wetland resource areas shall be the responsibility of the applicant to repair, restore and/or replace. Sedimentation or erosion into these areas shall be considered damage to wetland resource areas. If sediment reaches these areas the applicant shall contact the Conservation Commission and the Department immediately. A plan for abatement of problem and restoration shall be submitted to and approved by the Department.
22. The limits of work depicted on the plan must be clearly marked in the field prior to commencement of construction. The erosion control barrier shall serve as a work limit line for this project. Under no circumstances is any work allowed to take place on the resource area side of the barrier replacement and shall include materials to repair silt fences, haybales, stone rip-rap filter dikes or any other devices planned for use during construction.
23. Upon completion of this project, the design engineer or other Professional Engineer (P.E.) shall at the request of the applicant submit to the Department a written statement, stamped and signed, which certifies that project has been done according to submitted plans and this Order. The project shall not be considered complete without submittal of this statement to the Department. This statement shall be accompanied by a request from the applicant to the Department for a Certificate of Compliance for this Order of Conditions.
24. The proposed wetland replication area must meet the Performance Standards for Bordering Vegetated Wetlands (Wet Meadows, Marshes, Swamps, and Bogs), 310 CMR 10.55 (4)(b). Replication must be based on the best available information for such areas and must be supervised by a wetlands specialist who shall be a professional with experience in wetland replication and a working knowledge of botany and hydrology.
25. Wetland Regulation (310 CMR 10.55 (4)(b)(6) requires that at least 75% of the surface of the replacement area be re-established with indigenous wetland plant species within two growing seasons. If monitoring data indicates that this objective cannot be met a corrective plan of action shall be submitted to the Department for approval, and implemented under the supervision of a wetlands specialist.
26. These lots contain areas that are subject to the Wetlands Protection Act. Any future alteration, filling, dredging removal of vegetation or other work in or within 100 feet of those areas will require notification of the Conservation Commission and Department. This condition is ongoing and does not end upon the completion of this project or the issuance of a Certificate of Compliance.
27. This Order supersedes all previous Orders of Conditions issued for DEP File # 85-971.

END OF SPECIAL CONDITIONS

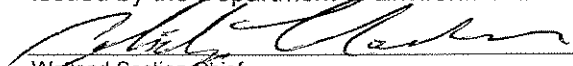
D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.

E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions #4 or #6.

Issued by the Department of Environmental Protection:


Wetland Section Chief

October 16, 2007
Date

Notary Acknowledgment

Commonwealth of Massachusetts County of

Worcester

On this

16th
Day

of

October
Month

2007
Year

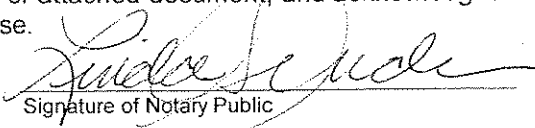
before me, the undersigned Notary Public, personally appeared

Philip P. Nadeau, Wetlands Section Chief
Name of Document Signer

Proved to me through satisfactory evidence of identification, which was/were

personally known
Description of evidence of identification

to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.


Signature of Notary Public

LINDA S. ANDERSON
Printed Name of Notary Public

See attached for appeal rights

June 5, 2009
My Commission Expires (Date)

F. Appeals

For Notices of Intent filed AFTER March 1, 2005:

The applicant or landowner, the conservation commission, any person aggrieved by this Superseding Order or Determination if previously a participant in the permit proceedings, any owner of land abutting the land subject to this Superseding Order or Determination if previously a participant in the permit proceedings, or any ten residents of the city or town where the land is located, if any one resident was previously a participant in the permit proceedings, are hereby notified of their right to file a Notice of Claim for an Adjudicatory Appeal (Notice of Claim) pursuant to M.G.L. c. 30A, sec. 10. Previous participation in the Superseding Order or Determination permit proceedings means the submission of written information to the Conservation Commission prior to the close of the public hearing, filing a Request For A Superseding Order or Determination with the Department, or providing written information to the Department prior to issuance of a Superseding Order or Determination. Complete adjudicatory appeal applications require the submittal of a Notice of Claim and an Adjudicatory Appeal Fee Transmittal Form. A completed Fee Transmittal Form (available at: <http://www.mass.gov/oa/feetrans.htm>) including an appeal fee payment of \$100.00, must be mailed to the DEP Lockbox at:

Department of Environmental Protection
Box 4062
Boston, MA 02211

The Notice of Claim (including a copy of the \$100.00 appeal fee payment check and a copy of the Fee Transmittal Form) must be sent by certified mail or be hand delivered to the Department within ten business days after the date of issuance of this Superseding Order or Determination. The Notice of Claim must be addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street – 2nd Floor
Boston, MA 02108

A copy of the Notice of Claim shall, at the same time, be sent by certified mail or hand delivery to the Conservation Commission, the applicant, and any other parties involved in the proceeding.

The Notice of Claim shall clearly and concisely set forth the facts related to the proceeding, the reasons the Superseding Order or Superseding Determination is considered to be inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in M.G.L. c. 131, § 40, and the relief sought through the adjudicatory appeal, including the changes desired in the Superseding Order or Superseding Determination. The Notice of Claim must include a copy of the document subject to the appeal and set forth: the Department Wetlands File Number; the name of the applicant and address of the project; the complete name, address, telephone and telefax (if any) numbers of the party filing the request, and, if represented by counsel, the name, address, telephone and telefax (if any) numbers of the attorney; the names, addresses, telephone and telefax (if any) numbers of all other parties, if known; and a statement that a copy of the request has been sent to the applicant, the conservation commission and each other party or representative of such party, if known. In addition, any person filing a Notice of Claim must also set forth sufficient facts to demonstrate their status as a person aggrieved, an abutter, or a ten residents group, and provide documentation to demonstrate previous participation, where required. Failure to submit all necessary information may result in a dismissal by the Department of the Notice of Claim for an Adjudicatory Hearing. Any ten persons may intervene in an adjudicatory proceeding pursuant to M.G.L. c. 30A, s. 10A.

G. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 9 of this form shall be submitted to the DEP Regional Office listed below.

DEP - Wetlands Program 627 Main Street Worcester, MA 01608
Regional Office of the Department of Environmental Protection

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Department.

To:

Central Regional Office - DEP

Regional Office of the Department of Environmental Protection

Please be advised that the Order of Conditions for the Project at:

West of 8 Spring Hill Road Acton, MA

Project Location

85-971

DEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

for:

Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant